

**United States Department of Labor  
Employees' Compensation Appeals Board**

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<b>G.S., Appellant</b>	)	
	)	
<b>and</b>	)	<b>Docket No. 23-0522</b>
	)	<b>Issued: October 3, 2023</b>
<b>U.S. POSTAL SERVICE, CHICAGO</b>	)	
<b>PROCESSING &amp; DISTRIBUTION CENTER,</b>	)	
<b>Chicago, IL, Employer</b>	)	
_____	)	

*Appearances:*  
*Appellant, pro se*  
*Office of Solicitor, for the Director*

*Case Submitted on the Record*

**DECISION AND ORDER**

Before:  
ALEC J. KOROMILAS, Chief Judge  
PATRICIA H. FITZGERALD, Deputy Chief Judge  
JAMES D. MCGINLEY, Alternate Judge

**JURISDICTION**

On March 7, 2023 appellant filed a timely appeal from a September 12, 2022 merit decision of the Office of Workers' Compensation Programs (OWCP). Pursuant to the Federal Employees' Compensation Act<sup>1</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction over the merits of this case.<sup>2</sup>

**ISSUES**

The issues are: (1) whether OWCP properly determined that appellant received an overpayment of compensation in the amount of \$20,736.29, for the period April 1, 2020 through

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<sup>1</sup> 5 U.S.C. § 8101 *et seq.*

<sup>2</sup> The Board notes that following the September 12, 2022 decision, appellant submitted additional evidence to OWCP. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

June 6, 2022, for which he was without fault, because he concurrently received Social Security Administration (SSA) age-related retirement benefits and FECA wage-loss compensation without an appropriate offset; and (2) whether OWCP properly denied waiver of recovery of the overpayment.

### **FACTUAL HISTORY**

On December 23, 2016 appellant, then a 61-year-old tractor trailer operator, filed a traumatic injury claim (Form CA-1) alleging that he strained his right shoulder when he slipped on ice in the dock parking lot while in the performance of duty. His retirement system coverage was noted as Federal Employees Retirement System (FERS). Appellant stopped work on December 23, 2016. OWCP accepted the claim for strain of muscle, fascia, and tendon at neck level, lumbar sprain, and strain of muscle, fascia, and tendon of the right shoulder. It subsequently expanded the acceptance of appellant's claim to include lumbar stenosis, lumbosacral spondylosis without myelopathy or radiculopathy, aggravation of lumbosacral disc degeneration, aggravation of cervical disc disorders, cervical root disorders not otherwise classified, cervical spondylosis without myelopathy or radiculopathy, cervical stenosis, and cervical disc disorder at C4-5, C5-6, and C6-7 with myelopathy. OWCP paid him wage-loss compensation.

On June 23, 2022 OWCP provided SSA with a FERS/SSA dual benefits form. It listed the computation period as January 1, 2016 through June 17, 2022.

On July 6, 2022 SSA completed the FERS/SSA dual benefits form, wherein SSA calculated appellant's SSA age-related retirement benefit rates with a FERS offset and without a FERS offset. Beginning April 1, 2020, the SSA rate with FERS was \$2,262.40 and without FERS was \$941.10. Beginning June 1, 2021, the SSA rate with FERS was \$2,457.40 and without FERS was \$1,022.20. Beginning December 1, 2021, the SSA rate with FERS was \$2,602.40 and without FERS was \$1,082.40.

In an August 4, 2022 compensation adjustment sheet, OWCP calculated a \$36,635.43 overpayment of compensation for the period April 1, 2020 through June 6, 2022 as appellant concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset.

In a FERS offset overpayment calculation worksheet dated August 8, 2022, OWCP calculated a total overpayment in the amount of \$20,736.29. It determined that, for the period April 1 through May 31, 2020, appellant received an overpayment in the amount of \$2,657.12. For the period June 1 through November 30, 2021, appellant received an overpayment of \$8,658.51, and for the period December 1, 2021 through June 6, 2022, appellant received an overpayment in the amount of \$9,420.66. OWCP added these amounts to equal an overpayment of \$20,736.29.

In a preliminary overpayment determination dated August 8, 2022, OWCP notified appellant of its preliminary finding that he received an overpayment of compensation in the amount of \$20,736.29 for the period April 1, 2020 through June 6, 2022 because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset. It determined that appellant was without fault in the creation of the

overpayment. OWCP requested that he submit a completed overpayment recovery questionnaire (Form OWCP-20), along with supporting financial documentation, including copies of income tax returns, bank account statements, bills, pay slips, and any other records to support his reported income, assets, and expenses. It provided an appeal request form and further notified appellant that, within 30 days of the date of the letter, he could contest the overpayment and request a final decision based on the written evidence, or a precoupment hearing. No response was received.

By decision dated September 12, 2022, OWCP finalized the preliminary overpayment determination, finding that appellant received an overpayment of compensation in the amount of \$20,736.29 for the period April 1, 2020 through June 6, 2022 because he concurrently received FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset. It further found that he was without fault in the creation of the overpayment, but denied waiver of recovery of the overpayment, because he had not responded to the preliminary overpayment determination. OWCP required that appellant forward the full amount of \$20,736.29 within 30 days to repay the overpayment of compensation.

### **LEGAL PRECEDENT -- ISSUE 1**

Section 8102 of FECA provides that the United States shall pay compensation for the disability of an employee resulting from personal injury sustained while in the performance of duty.<sup>3</sup> Section 8116 limits the right of an employee to receive compensation. While an employee is receiving compensation, he or she may not receive salary, pay, or remuneration of any type from the United States.<sup>4</sup>

Section 10.421(d) of OWCP's implementing regulations requires that OWCP reduce the amount of compensation by the amount of SSA age-related benefits that are attributable to federal service of the employee.<sup>5</sup> FECA Bulletin No. 97-09 provides that FECA benefits have to be adjusted for the FERS portion of SSA benefits because the portion of the SSA benefit earned as a federal employee is part of the FERS retirement package, and the receipt of FECA benefits and federal retirement concurrently is a prohibited dual benefit.<sup>6</sup>

### **ANALYSIS -- ISSUE 1**

The Board finds that OWCP properly determined that appellant received an overpayment of compensation for the period April 1, 2020 through June 6, 2022, as he concurrently received

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<sup>3</sup> 5 U.S.C. § 8102(a).

<sup>4</sup> *Id.* at § 8116.

<sup>5</sup> 20 C.F.R. § 10.421(d); *M.W.*, Docket No. 22-0791 (issued November 10, 2022); *D.L.*, Docket No. 20-0716 (issued June 1, 2022); *E.R.*, Docket No. 21-0133 (issued November 15, 2021); *M.R.*, Docket No. 20-1622 (issued June 30, 2021); *S.S.*, Docket No. 19-1945 (issued March 25, 2021); *see S.O.*, Docket No. 18-0254 (issued August 2, 2018); *L.J.*, 59 ECAB 264 (2007).

<sup>6</sup> FECA Bulletin No. 97-09 (issued February 3, 1997).

FECA wage-loss compensation and SSA age-related retirement benefits without an appropriate offset.

OWCP paid appellant wage-loss compensation for total disability from work due to his accepted injury beginning March 6, 2020. Appellant received SSA age-related retirement benefits beginning April 1, 2020. A claimant cannot concurrently receive FECA wage-loss compensation and SSA age-related retirement benefits attributable to federal service for the same period.<sup>7</sup> The information provided by SSA established that appellant concurrently received SSA age-related retirement benefits that were attributable to his federal service. Accordingly, the fact of overpayment has been established.

The Board further finds, however, that the case is not in posture for decision regarding the amount of the overpayment.

In determining the amount of the overpayment, OWCP calculated in its August 4, 2022 compensation adjustment worksheet that appellant had received an overpayment in the amount of \$36,635.40 for the period April 1, 2020 through June 6, 2022. However, in its August 8, 2022 FERS offset overpayment calculation worksheet, it calculated a \$20,736.29 overpayment of compensation. The discrepancy between the two amounts is due to OWCP's omission of the period June 1, 2020 through May 31, 2021 in the August 8, 2022 worksheet, whereas that period had been included in the August 4, 2022 worksheet. Consequently, the case must be remanded for recalculation of the amount of the overpayment.<sup>8</sup>

On remand OWCP shall clarify the amount of the overpayment of compensation and then issue a new preliminary overpayment determination, with an overpayment action request form, a Form OWCP-20, and instructions for appellant to provide supporting financial documentation.<sup>9</sup> After this and other such further development as deemed necessary, OWCP shall issue a *de novo* decision.<sup>10</sup>

### CONCLUSION

The Board finds that OWCP properly determined that appellant received an overpayment of compensation for the period April 1, 2020 through June 6, 2022, for which he was without fault, as he concurrently received FECA wage-loss compensation benefits and SSA age-related retirement benefits, without an appropriate offset. However, the Board further finds that the case

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<sup>7</sup> *Id.*; *M.R.*, Docket No. 20-0427 (issued October 30, 2020). *See also N.B.*, Docket No. 18-0795 (issued January 4, 2019); *A.C.*, Docket No. 18-1550 (issued February 21, 2019).

<sup>8</sup> *See J.B.*, Docket No. 20-0328 (issued January 12, 2023); *J.L.*, Docket No. 20-0444 (issued October 16, 2020).

<sup>9</sup> *J.B.*, *id.*; *D.K.*, Docket No. 22-0736 (issued December 6, 2022); *L.K.*, Docket No. 20-0416 (issued November 12, 2020).

<sup>10</sup> In light of the Board's disposition of Issue 1, Issue 2 is rendered moot.

is not in posture for decision with regard to the amount of the overpayment and waiver of recovery of the overpayment.

**ORDER**

**IT IS HEREBY ORDERED THAT** the September 12, 2022 decision of the Office of Workers' Compensation Programs is affirmed in part and set aside in part, and the case is remanded for further proceedings consistent with this decision of the Board.

Issued: October 3, 2023  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Patricia H. Fitzgerald, Deputy Chief Judge  
Employees' Compensation Appeals Board

James D. McGinley, Alternate Judge  
Employees' Compensation Appeals Board